UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

UNITED STATES OF AMERICA,	)	
	)	
	)	
v.	)	**Criminal 00-6-B-C**
	)	
	)	
JUAN RIVERA,	)	
	)	
Defendant	)	

CARTER, J.

MEMORANDUM OF DECISION

Defendant, Juan Rivera, files a motion to suppress evidence of drug activity seized in a raid of a hotel room in which he was staying on January 19, 2000. Defendant contends that the officers who conducted the search violated his rights under the Fourth Amendment because they failed to knock and announce their identity and purpose prior to entering the hotel room. Specifically, Defendant argues that neither the reviewing judge who issued the "no-knock" warrant, nor the officers who executed the warrant, had reason to believe that knocking and announcing would place the officers in peril or would lead to the destruction of evidence. For the following reasons, Defendant's motion is **DENIED**.

BACKGROUND

On January 19, 2000, Special Agent James Carr of the Maine Drug Enforcement Agency applied for a warrant to search for drugs and related contraband in Room 307 of the Econo Lodge located at 327 Odlin Road, Bangor, Maine. In support of his warrant application, Carr submitted an affidavit stating that three separate confidential informants had revealed that a group of

Hispanic men were selling a large amount of heroin and/or cocaine in the Bangor area. Carr Aff. ¶ IA-C. One of those informants, "CI#3", disclosed that he had purchased over 200 bags of heroin from different members of this group, who, he claims, were selling heroin from various hotels in the area during the previous months. Id. ¶ IC1. Moreover, CI#3 stated that the group brought a relatively large quantity of heroin to Bangor, where they then broke it down into smaller tin foil packages. Id. ¶ IC2. CI#3 had helped the group break down heroin in this way in the past. Id.

On January 18, 2000, CI#3 reported to Carr that earlier in the day "Chuly" had told CI#3 to come by Room 307 because "they had plenty." Carr Aff. ¶ IC5. Carr then arranged for CI#3 to make a "controlled purchase" of heroin at Room 307. Id. ¶ IC. As part of this arrangement, CI#3 was first searched for money or contraband, fitted with a bodywire, and given $400 in "buy money", the serial numbers of which the officers had recorded earlier. Id. ¶ ID. A special agent, named only as Jewett in the affidavit, then drove CI#3 to the hotel. Id. While CI#3 was in the hotel room, Carr listened to conversation in English and Spanish, the English portions of which were consistent with a drug transaction. Id. ¶ IE. Four minutes after entering the hotel, CI#3 returned to Jewett's car with 46 tin foil "folds." Id. ¶ IE & F. Carr then conducted a chemical field test of the substance in the tin foil folds, and the substance tested positive for opiates. Id. ¶ 1H. Carr knew from his training and experience that heroin tests positive for opiates. Id.

As part of his warrant application, Carr requested that the executing officers be able to serve the warrant "without providing notice of the officer's purpose and office." Carr Aff. final ¶. In support of this request, Carr stated the following in his affidavit:

> CI#3 has, in the past, seen one of the men who was associated with the group, who CI#3 knew as Flaco, carrying a handgun. CI#3 was told recently by another

> member of the group that Flaco was shot and killed during a drug deal in Massachusetts. CI#3 has not seen any guns, but from the actions of the group, CI#3 believes that members of the group are armed.

Id. ¶ IC3. Carr was also concerned that knocking announcing would lead to the destruction of evidence, and he pointed out in his affidavit that the "heroin packages are small and easily destroyed." Id. final ¶. He went on to note that "[r]ecently, in the same hotel, approximately 150 bags of heroin were flushed down a toilet." Id. Given this evidence, the reviewing judge issued a no-knock warrant to search the hotel room.

DISCUSSION

The Fourth Amendment incorporates the common-law rule that police officers executing a warrant must knock and announce their purpose and identity prior to entering a dwelling. *See Wilson v. Arkansas*, 514 U.S. 927, 934 (1995). A flexible requirement of reasonableness governs whether officers apply this rule in a particular context. *See id.* at 936. This flexible requirement does not allow per se exceptions to the knock-and-announce rule for certain criminal activity, such as felony drug cases. *See Richards v. Wisconsin*, 520 US 385, 394 (1997) (holding that "the knock-and-announce element of the Fourth Amendment's reasonableness requirement would be meaningless" if per se exceptions were allowed). Rather, "[i]n order to justify a 'no-knock' entry, the police must have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence." *Id.* at 394. As the Supreme Court noted, "[t]his showing is not high, but the police should be required to make it whenever the reasonableness of a no-knock entry is challenged." *Id.* at 394-95.

Defendant argues that the warrant application failed to demonstrate any "particular circumstances" demonstrating that knocking and announcing would be dangerous or would lead to the destruction of evidence. Specifically, Defendant asserts that the fact that a former member of the group carried a gun (the man had reportedly been killed in another state at some unknown time) does not reasonably demonstrate that the group in the Econo Lodge hotel room posed any threat to the physical safety of the officers. Furthermore, Defendant argues that Carr's affidavit did not present any "particular circumstances" showing that the destruction of drugs was more likely in this case than a typical drug case. Defendant points out that Carr's affidavit merely states that some undisclosed person subject to a different investigation flushed drugs down the toilet at the same Econo Lodge hotel some time in the recent past. Such a statement, Defendant contends, is "nothing more than a general assertion that destruction of evidence is a concern in drug investigations." Def.'s Mot to Suppress at 3. Defendant argues that allowing such blanket concerns to warrant a no-knock entry would permit the very per se exception that the Supreme Court in *Richards* explicitly forbid.

The Court need not address whether the police were reasonable to forego knocking and announcing their identity and purpose. The Court denies the motion to suppress pursuant to the good faith exception to the exclusionary rule as announced in *United States v. Leon*, 468 U.S. 897 (1984). The First Circuit has held that when a judicial officer issues a no-knock warrant, *Leon* is applicable. *See United States v. Hawkins*, 139 F.3d 29, 32 (1st Cir. 1998). Specifically, the Court will not exclude evidence discovered pursuant to a no-knock warrant if the executing officers are objectively reasonable in their reliance on such a warrant, even if the judicial officer should have required a more particularized showing of exigent circumstances. *Cf. United States*

v. Tisdale, 195 F.3d 70, 72 (2d Cir. 1999) ("[T]he issuance of a warrant with a no-knock provision potentially insulates the police against a subsequent finding that exigent circumstances, as defined by *Richards*, did not exist.") (relying on *Leon*, 468 U.S. 897).

There is good reason to apply the good-faith exception to the exclusionary rule in this case. First, since Defendant does not challenge the facts in the affidavit supporting the warrant, the executing officers "are clearly entitled to rely on the validity of the warrant." *See Hawkins*, 139 F.3d at 32 (citing *Leon*, 468 U.S. 897). In addition, the facts in support of the no-knock provision were not "so lacking" that Carr's belief in the need for no-knock authority was wholly unreasonable. *Leon*, 468 U.S. at 922 (internal citation omitted). A confidential informant told Carr that the Defendant and his cohorts might be armed, and Carr knew from his experience that the drugs in this case were easily disposable given their quantity. Even if this evidence is insufficient for a judicial officer to issue no-knock authority, the evidence at the very least demonstrates that the decision to issue such authority was a borderline call. *Leon* supports admissibility in such borderline cases, for officers are reasonable in relying on such warrants. *See United States v. Ricciardelli*, 998 F.2d 8, 15 (1st Cir. 1993) ("If . . . the warrant's defectiveness results from . . . borderline calls about the existence of probable cause, then the evidence may be used, despite the warrant's defectiveness.") (citing *Leon*, 468 U.S. at 926). Finally, suppressing evidence in this case would not serve the purpose of the exclusionary rule, which is designed "to deter police misconduct rather than to punish the errors of judges and magistrates." *Id.* at 916.

CONCLUSION

For the foregoing reasons, the evidence discovered in the hotel room was legally obtained and can be used by the government against Defendant at trial. Defendant's Motion to Suppress is **DENIED**.

So **ORDERED**

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GENE CARTER
United States District Judge

Dated this 15th day of May, 2000.

JUAN J RIVERA (2)
defendant

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